



MONTANA LEGISLATIVE BRANCH

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Legislative Fiscal Analyst
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DATE: May 31, 2002

TO: Legislative Finance Committee

FROM: Lois Steinbeck, Senior Fiscal Analyst

RE: HJR 1 Interim Study on Public Mental Health Services

The HJR 1 Committee studying public mental health issues and the Interim Committee on Children, Families, Public Health and Human Services held a joint meeting on May 14. The committees reviewed legislative proposals being prepared by other groups and determined which issues the committees would consider further.

The committee considered the issue that persons committed to the Montana State Hospital (MSH) having been found not guilty by reason of mental defect or disease, may reside at MSH indefinitely, despite reaching maximum benefit of hospitalization. The length of commitment may be for a longer period than a person convicted of a similar action and sentenced in the criminal justice system. The committee directed staff to review the statutory options available including the length of a commitment and actions taken in other states. Sen. Franklin is the committee contact and Susan Fox is the staff contact.

The committee decided to write a letter to the Montana Supreme Court regarding the impacts of the "KGF" decision, particularly in regard to the length of time a person may be in mental health facilities without treatment while awaiting the disposition of a commitment hearing. Greg Petesch is the staff contact.

The committee will review the 90-day involuntary commitment to Montana State Hospital (MSH) v. a 6-month involuntary community commitment and explore the need for prior commitment for a community commitment. Rep. John Esp is the legislative contact and Susan Fox is the staff contact.

The committee requested a draft bill to remove the sunset language that was included in SB 454 and make the following requirements permanent: review and modify statutory interdisciplinary teams to allow teams to function together as one unit where possible; expand to cover more children, including those at risk of out of home placement; and continue to include providers, families and advocates. Sen. Stonington is the committee contact and will be assisted by Jani McCall and Dan Anderson. Susan Fox is the staff contact.

The committee requested a bill draft to continue funding programs for persons with a mental illness and chemically dependency from alcohol tax funds. The committee requested that 10 percent of the amount allocated to Department of Public Health and Human Services (DPHHS) be used for dual diagnosis program funding. The committee also requested that DPHHS and legislative staff research other potential funding sources and report on alcohol tax rates for other states. Sen. Stonington is the committee contact and Lois Steinbeck is the staff contact.

The committee will send letters to the Veterans' Administration (VA) and to Montana's Congressional delegation regarding federal-level action on emergency subsistence grants and coordination with the VA and the state, including requesting a needs assessment for Montana Veterans. The committee will explore state legislation to place a veteran representative on Mental Health Oversight Advisory Council (MHOAC). The committee will explore the needs of veterans and the statutory responsibilities of the Mental Health Ombudsman and available resources. Sen. Keenan is the contact and will ask MHOAC to look into these issues as well. Sheri Heffelfinger is the staff contact.

The committee decided to review options to include a definition of mental disease or defect in statute. Greg Petesch is the staff contact and will provide some options for consideration, including reviewing the definition from New York cited by the Montana Supreme Court in cases before it.

Sen. Franklin also asked that all committee legislation be reviewed with regards to continuing to review statutes to include advanced practice registered nurse with a clinical specialty in mental health when appropriate as providers are mentioned in statute.

The committee reviewed staff research with regard to withdrawing the right to a jury trial for involuntary commitments to MSH. There are no options. The right must be maintained.

MHOAC, DPHHS, and Department of Corrections presented legislative priorities. The most significant of the changes discussed include:

- Instead of a judicial mental health commitment to MSH, commit persons to DPHHS or its designated entity for determination of placement during term of commitment, which may or may not include placement in MSH
- Develop options to divert persons from commitment to or placement in MSH through the development of intensive and acute care in community settings
- Allow legal guardians to apply for admittance of persons to the Montana Mental Health Nursing Care Center
- Amend section 46-14-312, MCA to allow transfer of persons committed to MSH as guilty but mentally ill from a DPHHS commitment to DOC commitment
- Amend section 46-18-101, MCA to specifically note that physical condition for Medicaid parole includes mental health conditions
- Provide judges the ability to change sentences based on medical conditions, including mental disease
- Support for provider rate increases

A representative from a working group - the Commitment Law Rendezvous – noted several concerns with the DOC proposal:

- Adequate victim notification and involvement
- Level of training and education of probation officers serious mental illness
- Desire for team approach in assessing individuals being considered for release
- Individual's eligibility for services in the community and availability of funding and resources for such services and time required to complete the federal disability (SSI) process
- Pre-release work requirements that conflict with federal disability determination criteria

The committee heard public testimony that identified additional issues:

- Develop front end mental health services in the correctional system specifically in community jails
- Divert mentally ill persons to local treatment before they are placed in correctional system
- With regard to any changes in the mental health commitment statute, consider the length of time that DPHHS be allowed to make alternative placements in community services and when an individual's status changes as time passes after the court makes its determination
- Consider pre commitment process with regard to the Montana Supreme Court "KGF" decision – length of time prior to commitment hearing, length of time without treatment, how to minimize costs to the county
- Provide education for probation and parole system to manage mental health cases

The committee will continue to monitor the progress of other work groups as they flesh out and fine-tune recommendations and proposals on legislative issues. Sen. Franklin will be the contact for groups working on changes to the commitment law.

The committee also reviewed DPHHS budget status, with particular emphasis on mental health expenditures and funding. The committee discussed the "medically fragile" waiver that DPHHS is researching. The waiver is included in the DPHHS plan to reduce expenditures and not exceed 2003 biennium appropriations. The waiver is expected to save \$2.9 million general fund annually. At this point in time, preliminary plans for the waiver are to maintain all Medicaid services for medically fragile persons as defined by the state. Medically fragile would include children, disabled and aged persons. All other Medicaid eligible persons would receive a more limited service package, which has not been finalized. Preliminary plans would eliminate most or all optional Medicaid services, such as prescription drugs, and place limits on some mandatory services such as physician visits and inpatient hospital stays. The committee requested that Greg Petesch provide a legal review as to whether or not statutory change is needed for issues being considered for the waiver.

If you have questions or need additional information please contact Susan Fox at 444-3597 or e-mail at sfox@mt.gov or Lois Steinbeck 444-5391 or e-mail at lsteinbeck@mt.gov.

The next meeting is scheduled for ½ day on August 6 and a full day on the 7th. The committee will review bill draft requests and finalize its recommendations to the Legislative Finance Committee.

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